

## **INITIAL STATEMENT OF REASONS**

California Legislation (Ch. 1248, Stats. 1990) (the Act), mandates that effective January 1, 1992, all vessels and/or marine facilities owners/operators shall be prohibited from transporting oil or operating a marine facility which transfers oil to or from a vessel in California, without first obtaining a certificate demonstrating specified levels of financial responsibility to pay for any damages resulting from oil spills occurring in California marine waters or in locations which could effect California marine waters.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing financial responsibility requirements were adopted to ensure that the affected public had clear and timely information regarding the methods of acquiring California Certificates of Financial Responsibility (COFR). The regulations were necessary to implement, interpret and make specific Government Code Section 8670.30(a)(1) and 8670.37.51 through 8670.37.57.

Recent California Legislation (Ch. 964, Stats. 1998) mandates that the Administrator adopt regulations and guidelines for nontank vessels in the marine waters of the state. Nontank vessels are those vessels other than a tank vessels, of 300 gross tons or greater, not designed to carry oil as cargo. These regulations and guidelines include requiring the vessel owner or operator to provide evidence of financial responsibility to the administrator.

An urgency bill, Senate Bill 387, (Ch. 687, Stats. 1999) revised Section 8670.32(i), and specified the following: it authorizes the Administrator to establish a lower standard of financial responsibility for nontank barges and marine construction vessels, as defined in the statute, that is not less than the expected costs from a reasonable worst-case oil spill into marine waters; it defines a marine construction vessel as a nontank vessel and its associated equipment used for piledriving; damshell, hydraulic, and hopper dredging; pipe laying; rock placement; heavy lifts; and demolition that carries less than 4,500 barrels of oil; and finally, it defines a nontank barge as a nontank vessel that carries no more than 60 barrels of oil to operate onboard equipment, and that is not designed to carry oil as cargo and not equipped with a means of self-propulsion. It also allowed the Administrator to extend the certificate of financial responsibility requirements for nontank barges and marine construction vessels to January 1, 2000.

These proposed amendments to the regulations are needed to advise industry representatives and other affected parties of their responsibility in demonstrating their ability to pay for any damages caused by a spill when transporting or transferring oil on or near California marine waters and provide standard language for the instruments used to demonstrate financial responsibility. The specific purpose for each adoption, amendment, or repeal contained in these proposed regulations is set forth below:

### **SECTION 791. DEFINITIONS.**

Section 791(c) defines “marine construction vessel”. This definition clarifies which nontank vessels are required to comply with Sections 791 - 797, of the Government Code. The term defined in this subsection restates the definition found in Government Code (GC) Section 8670.32(a)(1). The OSPR has determined that this restatement is necessary to provide the regulated community with one concise document on which to rely, rather than referring the user first to the statutory language for this specific definition and back to the regulations for others. Restating the appropriate definition within these regulation sections ensures both clarity and accessibility.

Section 791(d) defines “nontank barge”. This definition clarifies which nontank vessels are required to comply with Sections 791 - 797, of the Government Code. The term defined in this subsection restates the definition found in Government Code (GC) Section 8670.32(a)(2). The OSPR has determined that this restatement is necessary to provide the regulated community with one concise document on which to rely, rather than referring the user first to the statutory language for this specific definition and back to the regulations for others. Restating the appropriate definition within these regulation sections ensures both clarity and accessibility.

Old subsections (c) - (g) were -re-lettered.

Section 791(e) was amended for clarity. The exception noted is necessary to explain that marine construction vessels and nontank barges are a subset of nontank vessels. Except as specifically identified in subsection 791.7(d)(1)(D), all other nontank vessel requirements pertain to the marine construction vessels and the nontank barges.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

## **SECTION 791.7 PROCEDURES FOR APPLICATIONS FOR CALIFORNIA CERTIFICATE OF FINANCIAL RESPONSIBILITY**

Section 791.7(c) was revised to include the latest revision date of FG OSPR Form 1972.

Section 791.7(d) was amended to include the language “marine construction vessel and nontank barges. This was added for clarity. This is necessary to clarify that marine construction vessels and nontank barges are required to comply with these regulations.

Section 791.7(d)(1) was amended to include the language “marine construction vessel and nontank barges. This was added for clarity. This is necessary to clarify that marine construction vessels and nontank barges are required to comply with these regulations.

Section 791.7(d)(1)(D) was added for clarity. Existing language, subsections (d)(1)(A-C), specifies the amount of financial ability the owner or operator must demonstrate to the Administrator. Language was added in this subsection to specify the amount, or in some instances, the calculation needed to determine the financial responsibility for the marine construction vessels and nontank barges.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

#### **SECTION 792. CERTIFICATION REQUIREMENTS: TANKERS, NONTANK VESSELS, LARGE BARGES, MARINE CONSTRUCTION VESSELS, NONTANK BARGES, AND OWNERS OF OIL.**

Existing language specifies requirements for tankers, nontank vessels, large barges, and owners of oil. Subsections 792 (a-e) were amended to include marine construction vessels and nontank barges. This is necessary to clarify that marine construction vessels and nontank barges are required to comply with these regulations.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

#### **SECTION 794. MULTIPLE VESSELS/FACILITIES CERTIFICATIONS.**

Existing language specifies requirements for tankers, nontank vessels, large barges, and owners of oil. Subsections 794 (b-d) were amended to include marine construction vessels and nontank barges. This is necessary to clarify that marine construction vessels and nontank barges are required to comply with these regulations.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

#### **SECTION 795. EVIDENCE OF FINANCIAL RESPONSIBILITY.**

Existing language specifies requirements for tankers, nontank vessels, large barges, and owners of oil. Subsection 795(a)(2) was amended to include marine construction vessels and nontank barges. This is necessary to clarify that marine construction vessels and nontank barges are required to comply with these regulations.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

## **SECTION 797. REPORTING AND SUSPENSION.**

Existing language refers to reporting and suspension for tankers, barges, nontank vessels, and marine facilities. This regulation would include marine construction vessels and nontank barges in this section. Subsection (a) was amended for clarity. The term “vessels” is specific to tankers and barges, so the phrase “tankers, barges and nontank vessels” was added. Section 8670.32(i) requires all nontank vessel owner/operators to provide the administrator with evidence of financial responsibility.

The authority citation was amended to include the code section specifying nontank vessel certificate of financial responsibility requirements. The authority and reference notations were amended to include Subsection 8670.32(a). This reference is necessary as it specifically addresses marine construction vessels and nontank barges.

## **APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY FOR OPERATORS OR OWNERS OF NONTANK VESSELS (FG OSPR FORM 1972).**

The above-mentioned form was amended for clarity. The revision date was amended.

Section B. Vessel Data, Item 6 was amended for clarity. Marine construction vessels and nontank barges are required to indicate their total volume of fuel, not their largest fuel tank capacity.

Section C. Evidence of Financial Responsibility, Item 2 was amended for clarity. Language was added in this subsection to specify the amount, or in some instances, the calculation needed to determine the financial responsibility for the marine construction vessels and nontank barges.

Section C, Items 2 and 3 were re-numbered.

Instructions, Item 8, was amended for clarity. A person’s name was deleted as unnecessary. The phrase “accounts receivable at” was added for clarity.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESSES.**

The OSPR must determine that there were no alternatives which would be more

effective in carrying out the requirements of statute of the proposed regulations or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulations.

### **UNDERLYING DATA**

Technical, theoretical or empirical studies or reports relied upon:

Senate Judiciary Committee, Bill Analysis for SB 1644.

Analysis of Oil Spill Costs and Financial Responsibility Requirements, Mercer Management Consulting, June 1993